

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES D. BOITEL
Claimant

VS.

ANR FREIGHT SYSTEMS, INC.
Respondent
Self-Insured

)
)
)
)
)

Docket No. 193,127

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Robert H. Foerschler on December 4, 1995. The Appeals Board heard oral argument March 19, 1996.

APPEARANCES

The claimant appeared by and through his attorney, Michael R. Wallace of Overland Park, Kansas. The respondent, a self-insured, appeared by and through its attorney, Elizabeth A. Boldt of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

Although other issues were listed in the claimant's Application for Review, at the time of oral argument claimant abandoned all issues except:

- (1) Whether claimant is entitled to an award for future medical treatment;
and
- (2) The nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

(1) Claimant should be awarded future medical treatment upon application to the Director.

The record, including claimant's testimony regarding ongoing complaints, as well as the report of Dr. Prostic, indicates claimant may need future medical treatment. Accordingly, the Appeals Board finds that the Award should be modified to provide claimant may be awarded future medical treatment upon proper application to and approval by the Director.

(2) The Appeals Board agrees with and affirms the finding that claimant sustained a 17.5 percent permanent partial general disability.

Claimant injured his low back on August 2, 1994 while helping to lower a heavy sofa from the top of a truckload to the floor. After attempts at conservative treatment, surgery was performed by Dr. Roger Hood. Claimant was released to return to work on February 13, 1995. Dr. Hood rated claimant's impairment at 10 percent permanent partial impairment of function to the body as a whole.

At the request of claimant's attorney, Dr. Prostic examined the claimant. He rated claimant's functional impairment at 20 percent to the body as a whole.

When the parties could not agree to the nature and extent of claimant's functional impairment, the Administrative Law Judge referred the claimant to Dr. Revis Lewis for an independent medical examination. Dr. Lewis examined the claimant on July 19, 1995. His findings were consistent that the disc protrusion at L4-5 on the left requiring surgery. He concluded there was slight instability at this level and some residual neurological deficit. Dr. Lewis rated claimant's impairment at 15-20 percent to the body as a whole. The Administrative Law Judge adopted the findings by the independent medical examiner and awarded benefits based upon 17.5 percent general body disability. The Appeals Board agrees.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler should be modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Charles D. Boitel, and against the respondent, ANR Freight Systems, a self-insured, for an accidental injury which occurred August 2, 1994, and based upon an average weekly wage of \$613.44, for 27 weeks of temporary total disability compensation at the rate of \$319.00 per week or \$8,613.00 followed by 70.53 weeks at the rate of \$319.00 per week or \$22,499.07 for a 17.5% permanent partial general body impairment of function, making a total award of \$31,112.07.

As of March 29, 1996, there is due and owing claimant 27 weeks of temporary total disability compensation at the rate of \$319.00 per week or \$8,613.00, followed by 59.43 weeks of permanent partial disability compensation at the rate of \$319.00 per week in the sum of \$18,958.17, for a total of \$27,571.17 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$3,540.90 is to be paid for 11.10 weeks at the rate of \$319.00 per week, until fully paid or further order of the Director.

Claimant may be awarded future medical treatment upon proper application to and approval by the Director.

Costs of transcripts in the record are taxed against respondent and carrier as follows:

Hostetler & Associates, Inc.	\$131.25
Metropolitan Court Reporters, Inc.	\$153.00

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Wallace, Overland Park, KS
Elizabeth A. Boldt, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director